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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C-570-070]**

**Rubber Bands from the People's Republic of China: Preliminary Affirmative**

**Determination of Critical Circumstances, in Part, in the Countervailing Duty Investigation, and Amendment to the Scope of the Preliminary Determination in the Countervailing Duty Investigation**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) has preliminarily determined that critical circumstances exist with respect to imports of rubber bands from certain producers and exporters from the People's Republic of China (China). Further, Commerce has amended the scope of the countervailing duty (CVD) investigation on rubber bands from China.

**DATES:** Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-4793.

**SUPPLEMENTARY INFORMATION:**

Background

On January 30, 2018, Commerce received a CVD petition concerning imports of rubber

bands from China filed in proper form on behalf of Alliance Rubber Co. (the petitioner).<sup>1</sup> The investigation was initiated on February 20, 2018,<sup>2</sup> and the affirmative *Preliminary Determination* was published on July 9, 2018.<sup>3</sup>

Commerce selected Graceful Imp. & Exp. Co., Ltd. (Graceful), Moyoung Trading Co., Ltd. (Moyoung), and Ningbo Syloon Imp & Exp Co., Ltd. (Ningbo Syloon) (collectively, the mandatory respondents) as the individually-examined respondents in this investigation. Because neither the Government of China (GOC) nor the three mandatory respondents responded to Commerce's CVD questionnaire and, thus, are not cooperating in this investigation, Commerce's preliminary determination was based on the application of adverse facts available (AFA) in accordance with section 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).<sup>4</sup>

On June 11, 2018, the petitioner alleged that critical circumstances exist with respect to imports of rubber bands from China, pursuant to section 703(e)(1) of the Act and 19 CFR 351.206.<sup>5</sup> On June 27, 2018, we notified the petitioner that additional information was needed to support the allegation, in particular monthly import data and an explanation for the proposed base period.<sup>6</sup> On August 7, 2018, the petitioner submitted an amended allegation of critical circumstances.<sup>7</sup>

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<sup>1</sup> See Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties: Rubber Bands from Thailand, China, and Sri Lanka," dated January 30, 2018 (Petition).

<sup>2</sup> See *Rubber Bands from Thailand, the People's Republic of China, and Sri Lanka: Initiation of Countervailing Duty Investigations*, 83 FR 8429 (February 27, 2018) (*Initiation Notice*), and accompanying Initiation Checklist.

<sup>3</sup> See *Rubber Bands from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 83 FR 31729 (July 9, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>4</sup> See *Preliminary Determination* PDM at Use of Facts Otherwise Available and Adverse Inferences.

<sup>5</sup> See Letter from the petitioner, "Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 11, 2018 (Critical Circumstances Allegation).

<sup>6</sup> See Letter to the petitioner, "Antidumping and Countervailing Duty Investigations of Rubber Bands from the People's Republic of China: Critical Circumstances Allegation," dated June 27, 2018.

<sup>7</sup> See Letter from the petitioner, "Rubber Bands from the People's Republic of China: Critical Circumstances Allegation, Supplement to Brief," dated August 7, 2018 (Amended Critical Circumstances Allegation).

In accordance with 19 CFR 351.206(c)(1), if the petitioner submits an allegation of critical circumstances 30 days or more before the scheduled date of the final determination,<sup>8</sup> Commerce will make a preliminary finding whether there is a reasonable basis to believe or suspect that critical circumstances exist. Commerce will issue its preliminary finding of critical circumstances within 30 days after the petitioner submits the allegation.<sup>9</sup>

#### Period of Investigation (POI)

The POI is January 1, 2017, through December 31, 2017.

#### Scope of the Investigation

The products covered by this investigation are rubber bands from China. For a complete description of the scope of this investigation, *see* the Appendix to this notice.

#### Scope Comments

In accordance with the preamble to Commerce's regulations,<sup>10</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>11</sup> Certain interested parties provided comments on the scope of the investigation as it appeared in the *Initiation Notice*.<sup>12</sup> For a summary of the product coverage comments and rebuttal responses submitted to the record of this CVD investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.<sup>13</sup> We are

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<sup>8</sup> The final determination for this CVD investigation is due no later than November 13, 2018.

<sup>9</sup> *See* 19 CFR 351.206(c)(2)(ii).

<sup>10</sup> *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>11</sup> *See Initiation Notice*, 83 FR at 8430.

<sup>12</sup> *See* Letter from Greenbrier International, Inc. and Conair Corporation, "Rubber Bands from, Thailand, China, and Sri Lanka: Scope Comments," dated March 12, 2018; Letter from Jafferjee Brothers Exports (Pvt) Ltd., "Rubber Bands from Thailand: Scope Comments," dated March 12, 2018; and Letter from the petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties on Rubber Bands from Thailand and China - Rebuttal Scope Comments," dated March 22, 2018.

<sup>13</sup> *See* Memorandum, "Rubber Bands from Thailand and the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with this notice (Preliminary Scope Decision Memorandum).

preliminarily modifying the scope language as it appeared in the *Initiation Notice* and *Preliminary Determination*. See the revised scope in the Appendix to this notice.

#### Allegation of Critical Circumstances

The petitioner alleges a massive increase of imports of rubber bands from China and provided monthly import data, sourced from the U.S. International Trade Commission's (ITC) Tariff and Trade DataWeb (DataWeb) for the period January 2017 through April 2018.<sup>14</sup> The petitioner states that a comparison of total imports (by value)<sup>15</sup> for the period February 2017 through April 2017, to the period February 2018 through April 2018, shows that imports of rubber bands from China increased by 17.22 percent,<sup>16</sup> which is considered "massive" under 19 CFR 351.206(h)(2).

The petitioner also alleges that there is a reasonable basis to believe that there are subsidies in this investigation which are inconsistent with the Subsidies and Countervailing Measures Agreement (SCM Agreement).<sup>17</sup>

#### Critical Circumstances Analysis

Section 703(e)(1) of the Act provides that Commerce will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the SCM Agreement,<sup>18</sup> and (B) there have been massive imports of the subject merchandise over a relatively short period.

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<sup>14</sup> See Amended Critical Circumstances Allegation at Exhibit 1.

<sup>15</sup> For "U.S. imports for consumption," DataWeb reports only US\$ value data for the harmonized tariff schedule number 4016.99.3510.

<sup>16</sup> See Amended Critical Circumstances Allegation at 3.

<sup>17</sup> See Critical Circumstances Allegation at 3-5.

<sup>18</sup> Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). See *e.g.*, *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 703(e)(1)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). The regulations also provide, however, that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.<sup>19</sup> Imports must increase by at least 15 percent during the comparison period to be considered massive.<sup>20</sup>

*Application of Facts Available for the Mandatory Respondents*

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Because the mandatory respondents decided to not participate in this investigation, we have made this preliminary determination with respect to critical circumstances on the basis of facts otherwise available, pursuant to section 776(a)(2)(A), (B), and (C) of the Act.

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting

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<sup>19</sup> See 19 CFR 351.206(i).

<sup>20</sup> See 19 CFR 351.206(h)(2).

to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. Because Graceful, Moyoung, and Ningbo Syloon did not cooperate to the best of their ability in this investigation, in selecting from the facts available, we find that an adverse inference is warranted, pursuant to section 776(b) of the Act, with respect to critical circumstances. As such, we are making an adverse inference that Graceful, Moyoung, and Ningbo Syloon each benefited from countervailable subsidies under the “Export Assistance Grants” program. As determined in Commerce’s Initiation Checklist, the “Export Assistance Grants” program, alleged in the Petition and supported by information reasonably available to the petitioner, appears to be export contingent and thus inconsistent with the SCM Agreement.<sup>21</sup> Also, based on AFA, we preliminarily determine that Graceful, Moyoung, and Ningbo Syloon had massive imports of subject merchandise over a relatively short period. Thus, we preliminarily determine that critical circumstances exist regarding imports of rubber bands shipped by Graceful, Moyoung, and Ningbo Syloon, pursuant to sections 703(e)(1) and 776(a) and (b) of the Act and 19 CFR 351.206.

#### *All Other Companies*

Consistent with prior determinations, we have not imputed the adverse inference of massive imports that we applied to the mandatory respondents to the non-individually examined companies receiving the all-others rate.<sup>22</sup> Rather, we examined data for total imports of subject merchandise during the comparison period relative to a base period to determine whether or not

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<sup>21</sup> See Initiation Checklist at 23.

<sup>22</sup> See e.g., *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the People’s Republic of China: Preliminary Affirmative Determination, Preliminary Partial Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 80 FR 79558

imports were massive with respect to these companies.

The petitioner stated that it is not aware of any seasonal or consumption trends.<sup>23</sup> The petitioner did not provide, pursuant to 19 CFR 351.206(i), any argument or evidence that importers, exporters, or producers had reason to believe, at some point prior to the filing of the Petition that a proceeding was likely.<sup>24</sup> Therefore, to determine whether or not there has been a massive surge of imports with respect to all other exporters or producers, we used a comparison period starting with February 2018, because the Petition was filed on January 30, 2018,<sup>25</sup> and ending with the most recent month for which we have import data on the record (*i.e.*, June 2018).

We obtained U.S. import value data from DataWeb for each month from January 2017 through June 2018.<sup>26</sup> It is Commerce's practice to base its critical circumstances analysis on all available data, using base and comparison periods of no less than three months. Therefore, we selected a five-month base period of September 2017 through January 2018, to compare to the comparison period of February 2018 through June 2018, to determine whether or not imports of subject merchandise were massive over a relatively short period. Our analysis of the data, which indicate a 9.1 percent decrease in imports of rubber bands from China, leads us to conclude that there was not a massive increase in imports, as defined by 19 CFR 351.206(h)(2).<sup>27</sup> Therefore,

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(December 22, 2015), and accompanying PDM at 17-20, unchanged in *Certain Cold-Rolled Steel Flat Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Partial Affirmative Critical Circumstances Determination*, 81 FR 32729 (May 24, 2016).

<sup>23</sup> See Critical Circumstances Allegation at 6.

<sup>24</sup> *Id.* and Amended Critical Circumstances Allegation.

<sup>25</sup> When a petition is filed in the second half of the month, Commerce's practice is to consider the month in which the petition was filed as part of the base period. Based on the date of filing of the Petition, *i.e.*, January 30, 2018, which is in the second half of the month, February 2018 begins the comparison period. See *e.g.*, *Certain Carbon and Alloy Steel Wire Rod from the Russian Federation and the United Arab Emirates: Affirmative Preliminary Determinations of Sales at Less Than Fair Value, and Affirmative Preliminary Determination of Critical Circumstances for Imports of Certain Carbon and Alloy Steel Wire Rod from the Russian Federation*, 82 FR 42794 (September 12, 2017), and accompanying PDM at 13.

<sup>26</sup> See Memorandum, "Countervailing Duty Investigation of Rubber Bands from the People's Republic of China: Import Data for Preliminary Determination of Critical Circumstances," dated concurrently with this notice.

<sup>27</sup> *Id.*

we preliminarily determine that critical circumstances do not exist with respect to all other exporters or producers.

We will make a final determination concerning critical circumstances for rubber bands from China when we make our final determination in this investigation, which is currently scheduled to be signed no later than November 13, 2018.

#### Public Comment

Interested parties may submit case briefs or other written comments with regard to this preliminary affirmative critical circumstances determination and the preliminary scope decision. Such submissions must be submitted to the Assistant Secretary for Enforcement and Compliance via ACCESS<sup>28</sup> no later than 30 days after the date on which this notice is published in the *Federal Register*.<sup>29</sup> Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>30</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>31</sup>

Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,<sup>32</sup> on the due dates established above.

#### Suspension of Liquidation

In accordance with section 703(e)(2)(A) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation, with regard to Graceful, Moyoung, and Ningbo

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<sup>28</sup> ACCESS is Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System. It is available to registered users at <http://access.trade.gov>, and in the Central Records Unit, room B8024 of the main Commerce building.

<sup>29</sup> See 19 CFR 351.309(c)(1)(i); see also 19 CFR 351.303 (for general filing requirements).

<sup>30</sup> See 19 CFR 351.309(d)(1).

<sup>31</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>32</sup> See 19 CFR 351.303(b)(1).



Syloon, of any unliquidated entries of subject merchandise from the China entered, or withdrawn from warehouse for consumption, on or after April 10, 2018, which is 90 days prior to the date of publication of the *Preliminary Determination* in the *Federal Register*. For such entries, CBP shall require a cash deposit equal to the estimated preliminary subsidy rates established for Graceful, Moyoung, and Ningbo Syloon in the *Preliminary Determination*. This suspension of liquidation will remain in effect until further notice. Further, as a result of the changes to the scope of the investigation in the Preliminary Scope Decision Memorandum, we are amending the scope of the investigation as published in the *Preliminary Determination*. We will send appropriate instructions to CBP to reflect these changes to the scope of the investigation.

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of this preliminary determination of critical circumstances.

This determination is issued and published pursuant to sections 703(f) and 777(i)(1) of the Act.

Dated: August 29, 2018.

**Christian Marsh,**

*Deputy Assistant Secretary*

*for Enforcement and Compliance.*

## **Appendix**

### **Amended Scope of the Investigation**

The products subject to this investigation are bands made of vulcanized rubber, with a flat length, as actually measured end-to-end by the band lying flat, no less than ½ inch and no greater than 10 inches; with a width, which measures the dimension perpendicular to the length, actually of at least 3/64 inch and no greater than 2 inches; and a wall thickness actually from 0.020 inch to 0.125 inch. Vulcanized rubber has been chemically processed into a more durable material by the addition of sulfur or other equivalent curatives or accelerators. Subject products are included regardless of color or inclusion of printed material on the rubber band's surface, including but not limited to, rubber bands with printing on them, such as a product name, advertising, or slogan, and printed material (*e.g.*, a tag) fastened to the rubber band by an adhesive or another temporary type of connection. The scope includes vulcanized rubber bands which are contained or otherwise exist in various forms and packages, such as, without limitation, vulcanized rubber bands included within a desk accessory set or other type of set or package, and vulcanized rubber band balls. The scope excludes products that consist of an elastomer loop and durable tag all-in-one, and bands that are being used at the time of import to fasten an imported product.

Excluded from the scope of this investigation are vulcanized rubber bands of various sizes with arrow shaped rubber protrusions from the outer diameter that exceeds at the anchor point a wall thickness of 0.125 inches and where the protrusion is used to loop around, secure and lock in place.

Excluded from the scope of this investigation are yarn/fabric-covered vulcanized rubber hair bands, regardless of size.

Merchandise covered by this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 4016.99.3510. Merchandise covered by the scope may also enter under HTSUS subheading 4016.99.6050. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the investigation is dispositive.

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